LASA
LEADING AGE SERVICES AUSTRALIA
The voice of aged care

Inquiry submission - financial and tax practices of for-profit aged care providers

June 2018

A strong voice and a helping hand for all providers of age services

Contents

1. Executive Summary

A report by the Australian Tax Justice Network[1] is understood to be a key input to this Inquiry. This report has recommended that any company receiving more than $10 million in federal funding in any year should be required to file a complete audited annual financial statement with the Australian Securities and Investments Commission (ASIC). It also recommended public and private companies be required to fully disclose all transactions between trusts and related entities.

The Australian Taxation Office, the Australian Competition and Consumer Commission and ASIC provide a suitable regulatory framework to deal with business practices in the for-profit sector. For the aged care sector, there is also extensive reporting to the Department of Health, which reflects the importance of accountability for the public funds the sector receives. The Aged Care Financing Authority is the appropriate body for financing of aged care.

The Commonwealth Government contributes around 75% of the expenditure in aged care in Australia. The 2018-19 Budget announced that an additional $5 billion would be spent on aged care over 5 years, and the forward estimates include significant new funding for home care places and 13,500 residential aged care places in 2018-19.

Yet within the Budget forward estimates, funds have been redirected from residential aged care growth to home care. There has been debate in the Estimates Committee hearings about the legitimacy of claiming the $5 billion in additional funding. Nevertheless, growing demand for home care is legitimate and must be addressed, but the sustainability of residential aged care is under threat. LASA has called for both immediate funding support for residential aged care and a sustainable aged care funding strategy to provide certainty in the medium to long-term.

The Tax Justice Network Report found that in 2015-16, the six largest for-profit aged care providers, including BUPA, Opal Aged Care, Regis Healthcare, Estia Health, Japara and Allity, received over $2.17 billion in government subsidies, made after-tax profits of $210 million and paid around $154 million in tax. This submission includes detailed analysis of the Tax Justice Network's critique. LASA notes that tax paid is aligned with the company tax rate.

LASA sought consultant advice in preparing this submission. LASA notes that StewartBrown will be making a submission to this Inquiry and LASA considers that its analysis brings a balanced, professional accounting view to the issues raised by the Tax Justice Network.

The Tax Justice Network makes linkages between revenue and tax payable, yet tax is paid on profit not revenue. It is important to recognise that the Tax Justice Network Report relies solely on publicly available information in relation to the companies and identifies no evidence of tax avoidance. Rather, it infers that the scale of revenues and complexity of corporate structures implies improper dealings.

StewartBrown has undertaken some analysis of Return on Assets Employed (ROA) for the sector generally. The ROA for 2015-16 was approximately 1.7%, and this declined to approximately 1.2% for 2016-17, with a forecast of around 0.5% for 2017-18. This is hardly a viable return for aged care provider organisations and supports LASA's urgent call for a sustainable funding strategy for residential aged care.

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[1] *Tax avoidance by For-profit aged care companies: Profit Shifting on Public Funds*, May 2018

2. Leading Age Services Australia

Leading Age Services Australia (LASA) is the national peak body representing and supporting providers of age services across residential care, home care and retirement living. Our purpose is to enable a high performing, respected and sustainable age services industry delivering affordable, accessible, quality care and services for older Australians. We represent our Members by advocating their views on issues of importance and we support our Members by providing information, services, training and events that enhance performance and sustainability.

LASA's membership base is made up of organisations providing care, support and services to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 57% of our Members are not-for-profit, 33% are for-profit providers and 10% of our Members are government providers. Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

3. The Inquiry

On 10 May 2018 the following matter was referred to the Economics References Committee for inquiry and report by **14 August 2018.**

The financial and tax practices of for-profit aged care providers, with particular reference to:

a) the use of any tax avoidance or aggressive tax minimisation strategies;

b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;

c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money;

d) whether current practices meet public expectations; and

e) any other related matters.

LASA understands that a key input to the inquiry was a Report by the Tax Justice Network, *Tax avoidance by for-profit aged care companies: profit shifting on public funds*, May 2018 (the Tax Justice Network Report)[2]. This Report was commissioned by the Australian Nurses and Midwifery Federation, which has launched a petition calling for greater transparency in the funding of the for-profit aged care sector and is currently conducting a national campaign calling for legislated nurse to resident ratios in residential aged care facilities.

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[2] https://d3n8a8pro7vhmx.cloudfront.net/taxjusticeorgau/pages/59/attachments/original/1525175963/TJN_For-Profit_Aged_Care_Report.pdf?1525175963

The report found that in 2015-16, the six largest for-profit aged care providers, including BUPA, Opal Aged Care, Regis Healthcare, Estia Health, Japara and Allity, received over $2.17 billion in government subsidies, made after-tax profits of $210 million and paid around $154 million in tax.

The report recommended any company receiving more than $10 million in federal funding in any year be required to file a complete audited annual financial statement with the Australian Securities and Investments Commission (ASIC).

It also recommended public and private companies be required to fully disclose all transactions between trusts and related entities.

The Tax Justice Network Report is not focused on the LASA Membership, yet there are key observations that LASA wants to make on behalf of its Members, in relation to both the Tax Justice Network Report and the Inquiry.

4. The context for aged care including growing demand

LASA notes the demographic data in the Tax Justice Network Report. LASA agrees that the aged care sector is critical to the well-being of older Australians, especially with demographic change resulting in greater demand for aged care services. Responsive, flexible and innovative aged care choices are needed and these need to be affordable.

Older people are a growing proportion of Australia's population; in 2016, 15% (one in seven) Australians were aged 65 years or older. By 2056 this percentage is expected to grow to 22% (8.7 million).

The need for aged care services is increasing. Between 2015– 2016 almost 214,000 people entered aged care in Australia. On average, older people in Australia spend three years in permanent residential care, just over two years in home care, and one and a half months in respite care.

The Commonwealth Government contributes around 75% of the expenditure in aged care in Australia, which is around 96% of the total funding on aged care from Commonwealth and State Governments. Government recurrent spending on aged care services in Australia was $17.4 billion Australian dollars (AUD) in 2016-2017, with residential aged care services accounting for 69.3% ($12.1 billion AUD).

The 2018-19 Budget announced that an additional $5 billion would be spent on aged care over 5 years, and the forward estimates include significant new funding for home care places and 13,500 residential aged care places in 2018-19.

Yet within the Budget forward estimates, funds have been redirected from residential aged care growth to home care. Meeting demand for home care is legitimate and must be addressed, but the sustainability of residential aged care is under threat. LASA has called for both immediate funding support for residential aged care and a sustainable aged care funding strategy to provide certainty in the medium to long-term. Further details are provided in Section BC3.

Term of Reference a) the use of any tax avoidance or aggressive tax minimisation strategies

A1 Characteristics of the residential aged care sector

The 2017 Aged Care Financing Authority Report (ACFA)[3] is a rich source of data to understand the sector.

At 30 June 2016, there were 949 residential care providers operating 195,825 residential care places in Australia. This compares with 972 operating 192,370 places as at 30 June 2015. As the residential care industry matures, some providers are seeking to expand the scale of their businesses. As a result, there has been a consolidation of industry providers.

The dominant ownership entity for residential care operators is not for profit, as employed by religious, charitable and community-based organisations. They represent 54 per cent of providers and operate 56 per cent of all residential aged care places. For profit providers account for 35 per cent of providers and 39 per cent of places. The remaining providers and places are state and territory and local government-owned providers.

Page 5 of the Tax Justice Report claims that there has been rapid growth in the size and spread of for-profit companies. Analysis of Department of Health data shows that as a percentage of total beds, the for profit sector held 36.2% in 2013 and 39.7% in 2017[4]. This would not appear to be at all unreasonable given the size and importance of the residential aged care sector.

Most private operators in the industry are small, family run businesses that have in some cases been transferred from one generation to another. The majority of residential care providers (616 or 65 per cent) operate only one residential care home. These single home providers account for 45,676 or 23 per cent of all operational residential care places. Conversely, 19 providers (private and not for profit) operate more than 20 homes, but they account for 53,782 or 27 per cent of operational places. The Tax Justice Network Report is focussed on the six largest for profit providers, which include international companies such as Bupa.

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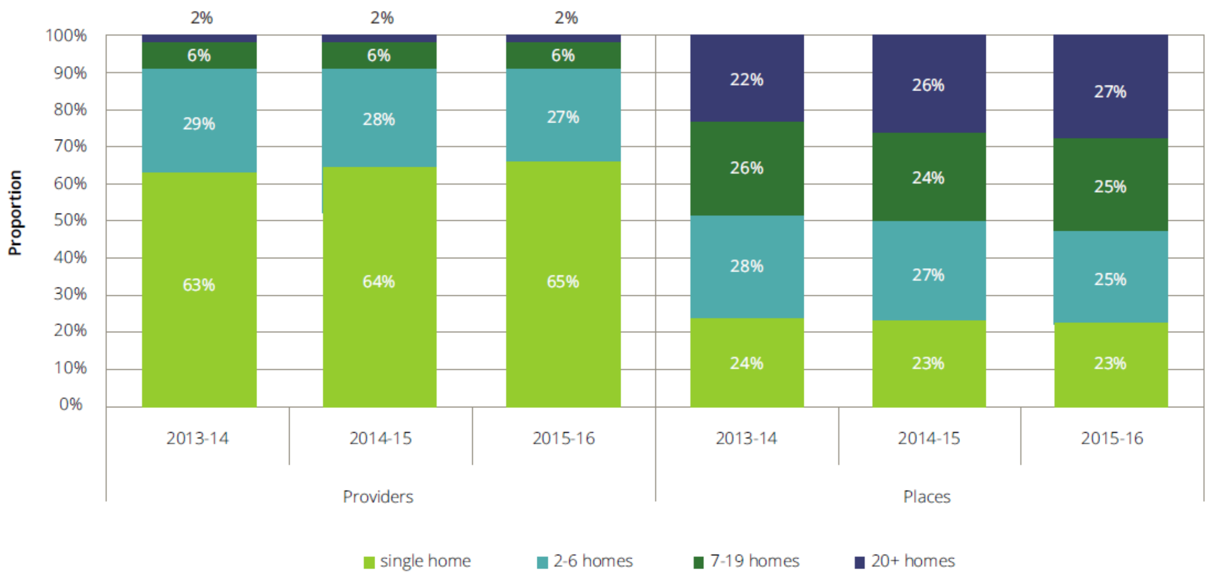
[3] https://agedcare.health.gov.au/reform/aged-care-financing-authority/2017-report-on-the-funding-and-financing-of-the-aged-care-industry

[4] The StewartBrown submission to the Inquiry covers this in detail.

Chart 8.3: Provider and operational places by provider scale, 2013-14 to 2015-16



ACFA Report 2017

LASA's Members typically operate on a smaller scale with less complex business structures, generally without overseas subsidiaries. The Tax Justice Network Report says that "Complex corporate structures with extensive related party transactions are a hallmark of aggressive tax avoidance. Related party transactions are frequently used to shift profits to jurisdictions or entities with lower tax rates or other tax benefits. For Bupa, the lease payments to a related party are significantly larger than the reported after tax profit." Yet evidence is not provided of actual tax avoidance by the companies covered by the Tax Justice Network Report.

A2 What is the Tax Justice Network Report saying?

The table below is from page 11 of the Tax Justice Report. The tax payable compared to the taxable income is around 30%, aligned with the company tax rate. Thus, the key line of inquiry seems to be around the legitimacy of getting from total income to taxable income.

Table 2: ATO Corporate Tax Transparency Data 2015/16 & 2014/15

($ millions)	2015/16				2014/15			
Company	Total income	Taxable income	% Taxable	Tax payable	Total income	Taxable income	% Taxable	Tax payable
Bupa (total)	$7,484.9	$352.9	4.7%	$104.7	$6,743.4	$334.5	5.0%	$96.3
Opal	$527.2	$7.9	1.5%	$2.4	$236.9	$0.0	0.0%	$0.0
Regis	$484.4	$68.7	14.2%	$20.6	$481.5	$46.2	9.6%	$13.8
Estia	$447.4	$58.3	13.0%	$17.5	$285.8	$15.5	5.4%	$4.7
Japara	$333.9	$29.4	8.8%	$8.8	$285.6	$20.9	7.3%	$6.3
Allity	$315.6	$0.0	0.0%	$0.0	$298.8	$0.0	0.0%	$0.0
TOTALS	$9,593.0	$517.2	5.4%	$154.0	$8,332.0	$417.1	5.0%	$121.0

A key argument in the report is for greater transparency based on the high level of public funding. The key recommendation is for companies that receive > $10 m in taxpayer subsidies to file complete audited annual financial statements (including trust transactions) and not be eligible for Reduced Disclosure Requirements. The Network supports current reform measures – Multinational Anti-Avoidance Law and the Opposition policy of minimum taxation of discretionary trusts.

The Tax Justice Network is focused on corporate structuring and how it affects taxes. It notes "Companies can use various accounting methods to avoid paying tax. One method is when a company links (staples) two or more businesses (securities) they own together, each security is treated separately for tax purposes to reduce the amount of tax the company has to pay. Aged care companies are known to use this method as well as other tax avoiding practices. Another practice is by "renting" their aged care homes from themselves (one security rents to another) or by providing loans between securities and shareholders".

A3 Observations on profit and tax

The Tax Justice Network Report found that in 2015-16, the six largest for-profit aged care providers, including BUPA, Opal Aged Care, Regis Healthcare, Estia Health, Japara and Allity, received over $2.17 billion in government subsidies, made after-tax profits of $210 million and paid around $154 million in tax.

As noted above, the tax paid in the above table is aligned with the company tax rate. Company tax is payable on taxable income not gross income.

LASA sought consultant advice in preparing this submission. LASA notes that StewartBrown will be making a submission to this Inquiry and LASA considers that its analysis brings a balanced, professional accounting view to the issues raised by the Tax Justice Network.

The Tax Justice Network makes linkages between revenue and tax payable. However, it is important to recognise that the Tax Justice Network Report relies solely on publicly available information in relation to the companies and identifies no evidence of tax avoidance. Rather, it infers that the scale of revenues and complexity of corporate structures implies improper dealings.

The companies quoted in the table have very low taxable incomes relative to their income and capital investment. As an example, the Estia 2016-17 annual report shows that in 2015-16 and 2016-17 the total assets of the company were $1.8 billion. In 2016-17 the company recorded a net profit after tax of $40.7 million. A common financial ratio is EBITDA return on assets (EBITDA / total assets). For Estia in 2016-17 EDBITDA was $86.4 million, producing an EBITDA return on assets of a modest 4.8%[5]. According to the 2016-17 Woolworths annual report, its EBITDA / total assets was 23.6%[6]. Fair financial returns are critical to encourage private sector investment in aged care to meet the growing demand for aged care. If fair returns cannot be made, then there is a high opportunity cost of investing in aged care, compared to other business opportunities.

[5] http://www.estiahealth.com.au/assets/media/files/Estia%20Health%20Annual%20Report%20FY17.pdf
[6] https://www.woolworthsgroup.com.au/icms_docs/188795_annual-report-2017.pdf

StewartBrown has undertaken some analysis of Return on Assets Employed (ROA) for the sector generally. The ROA for 2015-16 was approximately 1.7%, and this declined to approximately 1.2% for 2016-17, with a forecast of around 0.5% for 2017-18. This is hardly a viable return for aged care provider organisations and supports LASA's urgent call for a sustainable funding strategy for residential aged care.

The table quoted taxation from 2015-16 and 2014-15. As outlined later in this Section, residential aged care providers have been under increasing pressure due to cuts to the Aged Care Funding Instrument (including an indexation freeze over 2017-18), while facing rising costs in areas such as wages and energy. Outcomes for 2016-17 and 2017-18 will likely be different to what is shown in the table.

A key source of information on the sector is the Aged Care Financing Authority's (ACFA) annual reports on sector performance. ACFA's fifth annual report was issued in July 2017 and related to the 2016 fiscal year. This states that total profit for the sector was $1.1 billion, including $1.3 billion of 'other' income which suggests that operating profit is dependent upon 'other' income, as in previous years

The ACFA report makes specific mention of the inclusion of other (non-operating) income in the financial results with the observation that the overall profitability is dependent upon the other income.

For the purposes of this analysis other income includes the following items:-

- Interest income
- Investment income
- Trust distributions
- Donations and bequests
- Fundraising
- Capital grants
- Gains on sale of assets (property, plant and equipment; investment property; financial assets)
- Revaluation increases
- Insurance claims
- Other non-operating income

Similarly, non-operating expenditure (included in the ACFA financial results) includes:-

- Loss on sale of assets
- Revaluation decrements
- Interest expense (on borrowings)
- Other non-operating expenses

The difficulty in including "other income" (and similarly non-operating expenses) is that the treatment differs amongst providers, with many providers not allocating such income or expense to the residential operations, and others using an arbitrary allocation.

When assessing the true operational performance for the residential care segment, a strong argument can be supported that the inclusion of such income and expenses distorts the real financial analysis as this income/expenditure is variable from period to period (e.g. revaluations, donations and bequests, gains on sale of assets) and often not related to operating performance.

Recent StewartBrown analysis is that 41% of residential aged care facilities were making a financial loss at December 2017[7] compared with 31% in 2015-16.[8] This is a critical issue.

Funding cuts by successive Governments to residential aged care services, combined with rising operating costs and the growing acuity and complexity of residents' needs, is impacting financial performance.

With the ability for residential providers to derive additional revenues from consumers constrained by Government regulation financial pressures translate to cost cutting and reductions in investment.

In the 2017 Report, ACFA noted that the changes to the Aged Care Funding Instrument (ACFI) to date are being reflected in marginally reduced financial results as at March 2017, and that results may decline further as the full effect of the ACFI changes and indexation pauses take effect. However, the impact of these changes will not be apparent until the 2018 annual report and beyond.

The ACFA Report[9] released in 2017 has some other important information. Residential care providers generated revenue of $17.4 billion in 2015-16, equating to **$263.92 per resident per day**. Total expenses were $16.3 billion equating to **$247.58 per resident per day.** That is 94% of revenue was expended.

Residents also contributed around $4.5 billion toward their living expenses, care and accommodation (excluding accommodation deposits).

A4 Further analysis

Some additional observations from our for-profit Members and consultant advisers covering key elements of the Tax Justice Network Report follow.

Trusts

The Tax Justice Network Report notes 2017 Australian Labor Party (ALP) plans to "introduce a standard minimum 30 per cent tax rate for discretionary trust distributions". The policy acknowledges that individuals and businesses "use trusts for a range of legitimate reasons", but "in some cases, trusts are used solely for tax minimisation." The ALP argues that a new minimum 30% "tax rate on distributions will make sure discretionary trusts cannot be used as a vehicle for aggressive tax minimization.

[7] http://www.stewartbrown.com.au/news-articles/26-aged-care/150-december-2017-aged-care-benchmark-sector-reports-released

[8] Aged Care Financing Authority Report 2015/2016: https://agedcare.health.gov.au/aged-care-reform/aged-care-financing-authority

[9] https://agedcare.health.gov.au/reform/aged-care-financing-authority/2017-report-on-the-funding-and-financing-of-the-aged-care-industry

While some residential aged care providers make use of trusts, it is LASA's position that trusts are a preferred vehicle in small business to protect assets and allow flexibility to distribute income. Trusts need to distribute their profits which are taxed and if profits are not distributed they are taxed at the top marginal rate.

If there is a proposed change in trust taxation arrangements as a result of a change in Government, LASA would make an appropriate submission on this matter. Also, refer to section BC2 on probity.

Business structures

It is not uncommon for operators to structure their business so that the operating business is separate to the property side business for residential aged care, given the different considerations in these two business categories

Stapled securities are a legitimate business structure, recognised by the Australian Taxation Office (ATO)[10]:

Stapled securities are created when two or more different securities are legally bound together so that they can't be sold separately. Many types of securities can be stapled together. For example, many property trusts have their units stapled to the shares of companies with which they are closely associated.

Although the stapled security must be dealt with as a whole, the individual securities that are stapled are treated separately for tax purposes. For example, if a share in a company and a unit in a unit trust are stapled:

- the owner continues to include dividends from the company and trust distributions from the trust separately in their income tax return
- the share is a separate capital gains tax (CGT) asset from the unit, so capital gains and losses are determined separately for each asset.

[10] https://www.ato.gov.au/general/capital-gains-tax/shares,-units-and-similar-investments/stapled-securities/

In March 2018 the Australian Government released*, Stapled Structures, Details of Integrity Package*.[11] Differential tax rates were examined. As a result, changes are being made on 1 July 2018, with further changes from 1 July 2019. Companies will need to comply with all relevant provisions. However, some arrangements in existence at the date of government announcement of this package will have access to a seven year transition period instead of making changes at 1 July 2019.

LASA asserts that the issue of stapled securities is being dealt with.

Multinational Anti-Avoidance Law

In March 2018, the Government also introduced legislation to extend the reach of its successful Multinational Anti-Avoidance Law (MAAL). The Treasury's consultation paper on proposed amendments to the legislation stated that "MAAL took effect from 1 January 2016 and prevents multinationals from escaping Australian tax by using artificial or contrived arrangements to avoid having a taxable presence in Australia.

This new legislation will strengthen the integrity of the MAAL by preventing large multinationals from using foreign trusts and partnerships in corporate structures to avoid the application of the MAAL. This will ensure that the MAAL will continue to operate as intended. The proposed amendment "ensures that the application of the multinational anti-avoidance law cannot be avoided by interposing an Australian trust or partnership between the foreign entity and its Australian customers. Unlike the stapled structure reforms which provide for extended transitional arrangements, this amendment is retrospective to 1 January 2016, the original application date of the MAAL.

The *Treasury Laws Amendment (Tax Integrity and Other Measures) Act 2018* was assented to on 29 March 2018.

LASA would thus argue that the issue of multinational tax avoidance is well understood by the Australian Government and action to reign in tax avoidance has been taken.

Greater transparency in financial reporting

Principally, the Tax Justice Network is calling for greater reporting transparency, for providers receiving over $10 million in Commonwealth funds per year, including these providers not being eligible for Reduced Disclosure Requirements.

In June 2010, the Australian Accounting Standards Board (AASB) issued Standards establishing a differential reporting framework consisting of two tiers of reporting requirements for preparing general purpose financial statements (GPFSs)[12]:

(a) Tier 1: Australian Accounting Standards; and
(b) Tier 2: Australian Accounting Standards – Reduced Disclosure Requirements (RDR).

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[11] https://static.treasury.gov.au/uploads/sites/1/2018/03/FINAL_Stapled_Structures_Integrity_Package.pdf
[12] http://www.aasb.gov.au/Work-In-Progress/Reduced-Disclosure-Requirements.aspx

Compared with Tier 1, Tier 2 significantly reduces the disclosure burden and the costs of preparing and auditing GPFSs for most entities, whether for-profit or not-for-profit in the private and public sectors.

A major consideration in reporting for residential aged care providers, is 'red tape' and the multiple reports to multiple entities that must be made.

Just in the sphere of financial reporting, it is essential to note that the Department of Health mandates financial reporting for the residential aged care providers who receive subsidies from the Department.

Reporting of relevant financial and nonfinancial information is appropriate and adequate, and currently includes:

- The *Aged Care Act 1997* requires that the residential aged care providers prepare audited General Purpose Financial Reports (GPFR) in accordance with all accounting standards
- The *User Rights Principles 2014* state that the respective GPFR must be made available to all intending or current residents of residential aged care facilities
- The *Fees and Payments Principles 2014 (no. 2)* include four (4) standards that must be adhered by approved provider organisations, namely:-
  - Liquidity Standard
  - Records Standard
  - Governance Standard
  - Disclosure Standard.

In 2017, to stay in step with generally accepted good corporate governance and best practice, the Australian Government decided to continue the auditing requirement for the Annual Prudential Compliance Statement (APCS). [13]

This approach adjusts the previous advice to the aged care sector in late 2016 with the announcement of the Aged Care Financial Report (ACFR). The ACFR now involves a single template which consolidates the:

- APCS
- Survey of Aged Care Homes
- Home Care Financial Report
- Short Term Restorative Care Financial Report.

The General Purpose Financial Report (GPFR) stays in its current form as a stand-alone audited report. This report and the independent audited opinion accompanying the APCS must be submitted through the ACFR portal at the same time as the components above.

[13] https://agedcare.health.gov.au/programs/residential-care/changes-to-financial-reporting-arrangements-for-residential-and-home-care-providers

Additional financial reporting, should not be considered outside the context of a review of the overall reporting requirements for the residential aged care sector, noting that overall requirements are already onerous. Inefficient and onerous reporting, only adds to the administrative costs of aged care, whereas some of these costs could be better directed to funding direct care.

Conclusion
Overall, the ATO, the Australian Competition and Consumer Commission (ACCC) and the Australian Securities and Investment Commission (ASIC) provide a suitable regulatory framework to deal with business practices in the for-profit sector. As noted, for the aged care sector, there is also the reporting to the Department of Health and ACFA is the appropriate body to review and advise on the financing of aged care.

Term of reference b) the associated impacts on the quality of service delivery, the sustainability of the sector, or value for money for government;

Term of Reference c) the adequacy of accountability and probity mechanisms for the expenditure of taxpayer money

BC1 Aged care quality and accountability

LASA does not view that any of the Tax Justice Network analysis provides a coherent systematic link between the tax issues it raises and the quality of services. The Report notes that Opal has attracted attention for quality issues and that Opal has adopted reduced disclosure requirements. But, a causal link between the two issues has not been established.

LASA stresses that there has been significant recent review of the quality of residential aged care with the Carnell Paterson inquiry reporting in 2017, and the Government responding to these recommendations this year. The Zimmerman Inquiry (House of Representatives) is examining similar quality considerations. LASA has made submissions to these inquiries and has undertaken detailed analysis of plans for continuous improvements in residential aged care quality. In the main, these steps are entirely separate to questions of taxation which are principally the remit of the Australian Taxation Office.

Further, Section BC3 outlines the need for a sustainable funding strategy for aged care, and shows that this is an entirely separate issue to consideration of taxation strategies.

Aged care, and in particular, residential aged care, is a highly regulated and accountable industry. The Accreditation Standards are detailed in the Quality of Care Principles 2014.

There are four Standards:

Standard one: Management systems, staffing and organisational development

Standard two: Health and personal care

Standard three: Care recipient lifestyle

Standard four: Physical environment and safe systems

Each Standard consists of a principle and a number of expected outcomes. Standard one also has an 'intention' which indicates it acts as the umbrella for the other three Standards.

There are 44 expected outcomes across the four Standards. Homes must comply with all 44 expected outcomes at all times. Residential aged care providers are assessed against these standards via unannounced visits and by accreditation and reaccreditation processes.

There are key steps underway to further raise quality and accountability. The Government will establish an ***Aged Care Quality and Safety Commission*** from 1st January 2019. The Commission brings together the functions of the Aged Care Quality Agency, the Aged Care Complaints Commissioner and from 1 January 2020, the aged care regulatory functions of the Department of Health. The one stop shop is intended to ensure older Australians and their families have a single point of contact to raise concerns and ask questions about their aged care and to know the new function is empowered to make changes.

In addition, the Australian Aged Care Quality Agency is working with consumers, providers and other key stakeholders to develop guidance material for the draft single set of quality standards (Aged Care Quality Standards). The new Aged Care Quality Standards, developed by the Department of Health, will be legislated from July 2018, subject to Government agreement and parliamentary processes, with a 12-month transition period until July 2019.

BC2 Current developments on probity

Financial reporting considerations and accountability for subsidies for residential aged care has been covered in Section A4.

In addition to the current control on the industry and further continuous improvements in quality outlined in section above, the 2018-19 Budget included a measure regarding probity for residential aged care:

- ***$4.8 million for the Government over 4 years[14]*** to strengthen standards and guarantees for refundable accommodation deposits in residential aged care. This includes:
    - Introducing a compulsory retrospective levy on residential aged care service providers where defaults exceed $3 million in any fiscal year
    - Developing stronger prudential standards applied to accommodation payments held by residential service providers
    - Raising the Government's prudential regulatory capability to better protect the growing pool of accommodation payments.

[14] Note that is a separate section of the Budget communications it says $8.6 million over 4 years to improve management of prudential risk in aged care including through the introduction of a levy to secure accommodation bonds.

This is informed by both a Tune Report recommendation (# 21) and Ernst and Young recommendations on probity improvements for residential aged care. It is not known the extent to which the Government will adopt the Ernst and Young recommendations. LASA has made a submission on these recommendations which is attached and includes our Members' concerns about any changes to trusts.

BC3 A sustainable funding strategy for aged care is needed

David Tune's Report on the Legislated Review of the Living Longer Living Better (LLLB) reforms, was released in September 2017. This includes some important observations and recommendations on sector financial sustainability.

Most notably the report states the following:

- Meeting projected future demand will need additional investment by government beyond that currently planned
- Current planning mechanisms are not going to deliver sufficient services in the long term
- A key issue is how increased demand will be financed and the costs shared.

Analysis by independent industry analyst StewartBrown shows that 41% of residential aged care facilities were making a loss at December 2017[15] compared with 31% in 2015-16[16] - and the situation is predicted to get even worse.

The 2018-19 Budget provided funding support, especially for home care, and touched on some Tune recommendations, but LASA has argued that the Government needs to respond to the Tune Report in full. Further, the aged care sector needs a long-term, stable and sustainable funding strategy to ensure Australia has an accessible, affordable, quality aged care system.

While overall Government subsidies in residential aged care are growing year on year, this is largely addressing the increasing number of care recipients being cared for, as opposed to the actual complexity and acuity of individual person-centred care needs.

In particular, the Aged Care Funding Instrument (ACFI) allocates a fixed pool of funds to defined domains, based on a medical–disability model, which is not suitably responsive to the ever-changing acuity of needs of residents in care.

When looking at residential aged care, key gaps not addressed by the 2018-19 Budget are:

- Short-term funding relief for all residential aged care providers set at roughly 3 per cent of residential aged care ACFI funding, amounting to around $350 million per annum.
- An increase in the regional, rural and remote viability supplement to ensure ongoing provision of services in regional settings.
- Fair indexation, especially noting the new increase to the minimum wage of 3.5% from 1 July 2018.

[15] http://www.stewartbrown.com.au/news-articles/26-aged-care/150-december-2017-aged-care-benchmark-sector-reports-released
[16] Aged Care Financing Authority Report 2015/2016: https://agedcare.health.gov.au/aged-care-reform/aged-care-financing-authority

- Adjusting upwards the current threshold value ($162 K) of the family home in residential aged care means testing calculations (Tune #13)
- Increasing the maximum accommodation (bond) payment to $750 K (or equivalent daily payment) and implementing an automatic link between future maximum accommodation payment levels and median house prices, with possible adjustments to this for regional areas where local property values may not reflect the level of investment required (Tune #19).
- Allowing residential care providers to charge a higher basic daily fee to non-low means residents (Tune #14 (b)[17])
- Reviewing annual caps for means tested fees in residential care and abolishing lifetime caps for these fees (Tune #15)

It is against this backdrop that any financial analysis of the industry must be undertaken. For a sustainable aged care funding strategy all the necessary resource levers will need to be investigated including greater consumer contributions for those who can afford it, insurance schemes/Medicare levy changes and private insurance options etc. As part of this, optimal, evidence-based, appropriately funded staffing / care models require consideration, as detailed in the next section.

BC4 An integrated approach to workforce issues is needed

There has been a sustained campaign by unions, especially the Australian Nursing and Midwifery Federation (ANMF) for mandated nurse to client ratios in residential aged care. At times, this has been linked to calls for an increase in the direct care hours per resident.

Capped ACFI funding puts a constraint on increasing staffing levels, especially when indexation has not kept up with wage costs.

Regardless of funding considerations, LASA takes the position that mandated ratios are a blunt and simplistic input control, not aligned to evidence based models of care. This approach could also constrain innovation.

The Productivity Commission has recently re-iterated its view on mandated ratios.[18] In assessing end of life care, the Commission said that support for a more widespread presence of nurses and nurse practitioners in residential age care to lead and coordinate end-of-life care is not an endorsement of broader arguments to increase the stringency of requirements for nursing care in residential aged care. LASA agrees that better resourcing of residential end-of-life care, would increase the quality of outcomes for residents, while also reducing more costly hospital admissions.

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[17] Tune 14 (b): Allow providers to charge a higher basic daily fee to non-low means residents, with amounts over $100 to be approved by the Aged Care Pricing Commissioner

[18] http://www.pc.gov.au/inquiries/completed/human-services/reforms/report/01-human-services-reforms-life.pdf

But the Commission concluded that "The Commission remains of the view that mandatory staffing ratios are unlikely to be an efficient way to improve the quality of care in aged care (PC 2011a). The absence of ratios and nurse presence requirements within residential aged care facilities (RACFs) allows them to staff flexibly in response to residents' changing needs, and gives them an incentive to invest in innovative models of care or adopt new technologies that could assist care recipients. Imposing ratios or nurse presence requirements would also be at odds with principles of good stewardship (chapter 2), which require governments to focus on outcomes for users, rather than to prescribe processes or inputs".

LASA conducted a literature review on the evidence for staff ratios. This found:

- No evidence exists that confirms that a ratio of registered nurses to residents ensures better quality of care in residential care facilities . Six international reviews of the research literature exploring the link between mix of staff and number of staff in aged care do not deliver a clear answer whether more registered nurses in the staff mix improve quality of care.

LASA sees the way forward as:

- An integrated response to aged care workforce issues, informed by the work of the Aged Care Workforce Strategy Taskforce, Chaired by Professor John Pollaers. LASA has called on the Government to allocate suitable funding to implement workforce reforms. Professor Pollaers' 15 draft strategic actions help to define the likely scope of required workforce reforms including reforming training, defining new career pathways, improved workforce planning, and dealing with salary deficiencies and issues of attraction and retention. LASA will continue to consult its Members on the merits of the individual strategic actions.

- Within this, a strong focus on a better evidence base to drive continuous improvement in aged care. Appropriate and sustainable funding should follow to implement best practice. The new aged care standards under the Single Aged Care Quality Framework are a step forward but as recommended by Professor Pollaers, more research is needed. LASA is aware that Macquarie University is in the early stages of an extensive research project, *CareTrack Aged*[19], which will review the extent to which care encounters in residential aged care are delivered in line with evidence-based guidance. LASA believes that research that examines optimized models of care linked to the required outcomes under the aged care standards, should be a priority for the Government and stakeholders.

[19] http://aihi.mq.edu.au/project/caretrack-aged

Term of Reference d) whether current practices meet public expectations; and

D1 The importance of the for-profit sector in aged care

The 'Living Longer Living Better' reform program that is driving transformation in Australia's age services industry is underpinned by four key principles. These being:

- Ageing in place
- Consumer choice
- Market based competition
- Consumer contributions

The reform agenda's desired future state for Australia's aged care system is one where older Australians have a greater ability to 'age in place'. Older Australians have choice and control over the types of care, support, service and accommodation they need and desire. To meet the needs and desires of older Australians a functional market operates where providers offer a range age services differentiated on price, quality, service mix, innovation and value. And, older Australians contribute to the cost of their care, commensurate with their ability to do so.

For this term of reference, understanding the aged care reform agenda, as well as the observations made under the other terms of reference is relevant.

The Tax Justice Network Report says that: "In Australia, non-profit providers collectively operate a majority of residential aged care beds. However, the market share of large for-profit providers continues to grow rapidly. Likewise, the influence of for-profit providers on shaping government policy and influencing broader trends in the aged care sector has never been greater. Ranked by the number of government allocated residential aged care places (beds) in 2017, the six largest for-profit aged care companies in Australia are; Bupa, Opal, Regis, Estia, Japara, and Allity. Combined, they operate over 20% of all residential aged care beds in the country. These companies continue to expand market share through new developments and acquisitions. These companies are also expanding to provide more retirement living and home care services, which allow access to additional government funding".

It is not clear if an underlying message from the Tax Justice Network is that there is an inherent problem with having for-profit providers in residential aged care. If this is the case, it is at odds with an aged care policy reform agenda that is predicated on as a robust, mixed market approach to delivering consumer directed care and ageing in place outcomes.

The size of the for-profit residential aged care sector is outlined in section A1, with for-profit providers accounting for 35 per cent of providers and 39 per cent of places. The percentage share that the for-profit sector has of beds is relatively stable and does not present any particular problem. It is important to note that for-profit providers are better positioned to grow and meet the increased demand for aged care through their capital raising capability.

Overall, the aged care sector is an essential part of our economy. As part of its economic activities, the aged care sector produces output, employs labour and pays wages, and generates returns to capital. Deloitte Access Economics[20] estimates that the direct economic contribution resulting from this economic activity was $13.5 billion in value added in 2014-15. The direct contribution of the sector is approaching that of other important Australian industries such as residential building construction and the sheep, grains, beef and dairy cattle industry.

In addition to this direct economic contribution, the aged care sector utilises inputs from other industries in the Australian economy, such as food, accommodation and medical services. This indirectly generates economic activity by facilitating production and paying wages and returns in these other industries, with our estimates suggesting that the total value of this indirect economic contribution was a further $4.1 billion in 2014-15.

As a service industry, the aged care sector has a sizeable workforce that directly employs around 370,000 workers. These jobs fill a diverse range of roles, from nurses and care workers to management and administrative staff. The aged care sector also draws on a large network of volunteers whose numbers are not included in the measured workforce and whose efforts are not included in measures of economic contribution.

A major trend in aged care is consumer directed care (CDC). CDC reforms intend to provide consumers of aged care services with greater control over the types of aged care services they access, who will deliver these services and when. The key component of CDC is consumer-centricity, which emphasizes the wellbeing of the individual as defined by the individual. With CDC already implemented for home care packages, the 2018-19 Budget included funding for a feasibility study of CDC for residential care.

Noting the above, a robust, mixed market approach is essential to help meet both the demand for aged care and consumer expectations which includes responsive, flexible and innovative services. Without for-profit providers as part of this mixed market demand and choice parameters could not be met.

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[20] https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/12_2016/aged_care_guild_-_enclosure_1_-_deloitte_access_economics_-_australia_s_.pdf